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ATTORNEY FOR DEBTOR(S)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE:

FEYSAL AYATI-GHAFFARI

Debtor

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CASE NO. 18-41997

CHAPTER 13

OBJECTION TO CLAIM OF Chase Mortgage

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW **Feysal Ayati-Ghaffari**, Debtor in the above-numbered and styled cause, who files this his Objection to Claim of Chase Mortgage ("Respondent"), and would respectfully show the Court as follows:

1. **NO HEARING WILL BE CONDUCTED ON THIS MOTION**

UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN 30 DAYS FROM THE DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH RESPONSE. IF NO RESPONSE IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE

DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF A RESPONSE IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

2. Debtor **Feysal Ayati-Ghaffari** filed for bankruptcy protection under Chapter 13 on 9/4/2018, and his Plan is pending confirmation.

3. Respondent filed its proof of claim on or about November 13, 2018, claiming a secured interest in Debtor's homestead in the amount of 247,359.68.

4. Debtor objects to Respondent's proof of claim as facially deficient. Respondent has not demonstrated it is the holder of the Note and therefore entitled to enforce the Note.

5. Respondent's Proof of Claim includes sworn statements that are materially false and impossible to be taken as true as a whole. Exhibit A. Respondent's Proof of Claim includes a copy of the original note between Debtor and Freedom Mortgage Company dated November 3, 2008 (the Original Note, Exhibit A, page 13-15), an assignment from Mortgage Electronic Systems Inc. as Nominee for Freedom Mortgage Corporation to Chase Mortgage company dated March 25, 2014 (the Assignment, Exhibit A, page 34), and an affidavit of Vice President Jana Whitman as Custodian of Records for Chase Mortgage that Chase Mortgage cannot produce the original Note because it lost the original Note dated March 4, 2014 (the Lost Note Affidavit, Exhibit A, page 10-11). In other words, Chase avers in support of its proof of claim that the reason it cannot produce the Original Note is that it lost the Note prior to having been in possession of the Note.

6. Debtor disputes that Chase was ever in possession of the Original Note and therefore is not entitled to receive the mortgage payments due under the Note. The Note states that only the Lender or the Holder of the Note is entitled to receive mortgage payments under the Note. A year prior to the alleged Assignment, on March 3, 2013, Mortgage Electronic Registration Systems, Inc. filed a release of lien with the County Clerk for Collin County “in consideration of the payment in full according to the face and tenor thereof” of the Original Note. Exhibit B.

WHEREFORE, PREMISES CONSIDERED, Debtor **Feysal Ayati-Ghaffari** prays that the Court sustain Debtor's objection; disallow Respondent's claim; and for such other and further relief as the Court deems just.

Dated: December 4, 2018

Respectfully Submitted,

ALLMAND LAW FIRM, P.L.L.C.

/s/ Justin H. King

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